IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 139 OF 2007

IN

WRIT PETITION NO. 4475 OF 2007

Dhananjay Sawant .. Petitioner

V/s

Vilas Shripati Kesarkar & Ors. .. Respondents

Mr.Y.S. Jahagirdar, Senior Advocate with Ms. G. Godse for the petitioner.

Mr.M.V. Shingade with Mr.G.N. Salunkhe for respondent no.3.

Mr.A.A. Kumbhakoni, Associate Advocate General with Mr.C.R. Sonawane, A.G.P. for respondent no.6.

CORAM : S.B. MHASE &
D.G. KARNIK, JJ.

DATE : 14TH SEPTEMBER 2007

ORAL JUDGMENT: (Per D.G. Karnik, J.)

1. Heard the counsel for the parties.

2. By this petition, review is sought of our order dated 24th July 2007 on the ground that section 5B of the Mumbai Municipal Corporation Act was not in existence on the date on which the petitioner was elected and, therefore, the petitioner is not disqualified to be a councillor.

3. The petitioner was elected as a councillor in a seat reserved for other backward class. The petitioner, who had produced a caste certificate of belonging to a Kunbi Caste, got elected to the reserved seat. The caste certificate which was found to be incorrect and the caste certificate has been invalidated by an order dated 20th April 2007 by the Caste Scrutiny Committee. Even though section 5B of the Mumbai Municipal Corporation Act was not in force on the date on which the petitioner was elected, still we are of the view that the petitioner is not entitled to an interim relief to continue as a councillor for the reasons indicated below.

4. The Legislature of Maharashtra has enacted Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification Of) Caste Certificate Act, 2000 (Maharashtra Act No.XXIII of 2001). Section 10(4) of Maharashtra Act No.XXIII of 2001 reads as under:-

> **"Section 10**.
>
> (1) .....
>
> (2) .....

(3) .....

(4) Notwithstanding anything contained in any law for the time being in force, a person shall be disqualified for being a member of any statutory body if he has contested the election for local authority, Cooperative Society or any statutory body on the seat reserved for any of Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category by procuring a false Caste Certificate as belonging to such Caste, Tribe or Class on such false Caste Certificate being cancelled by the Scrutiny Committee, and any benefits obtained by such person shall be recoverable as arrears of land revenue and the election of such person shall be deemed to have been terminated retrospectively."

5. Sub-section (4) of section 10 of the Maharashtra Act No.XXIII of 2001 specifically provides that election of a person, who has been elected on the basis of false caste certificate, shall be deemed to have been terminated retrospectively if he was elected on the basis of a false caste certificate. Since the caste certificate of the petitioner has been found to be false and has been invalidated, his election as a councillor

to the post reserved for other backward classes stands terminated retrospectively.

6. In the circumstances, the petitioner is not entitled to the relief of continuation of his councillorship nor can the election to the said post which has become vacant be stayed. In view of this, for reasons which are different than those mentioned in the original order, we reject the review petition and confirm the order of refusal of stay.

(D.G. KARNIK, J.) (S.B. MHASE, J.)